

STATE OF MINNESOTA

IN SUPREME COURT

C8-84-1650 & C1-84-2140

ORDER FOR HEARING TO CONSIDER PROPOSED
AMENDMENTS TO THE RULES ON LAWYERS PROFESSIONAL
RESPONSIBILITY AND THE RULES OF PROFESSIONAL CONDUCT

IT IS HEREBY ORDERED that a hearing be had before this Court in Courtroom 300 of the Minnesota Supreme Court, Minnesota Judicial Center, on December 2, 1994 at 9:00 a.m., to consider the petition of the Minnesota State Bar Association to amend the Minnesota Rules on Lawyers Professional Responsibility and the Rules of Professional Conduct. A copy of the petition containing the proposed amendments is annexed to this order. The Court will also consider at this hearing the recommendations of the Advisory Committee to Review Lawyer Discipline in Minnesota and Evaluate the Recommendations of the American Bar Association, including proposed amendments to the Rules on Lawyers Professional Responsibility. The proposed rule changes are annexed to this order.

IT IS FURTHER ORDERED that:

1. All persons, including members of the Bench and Bar, desiring to present written statements concerning the subject matter of this hearing, but who do not wish to make an oral presentation at the hearing, shall file 12 copies of such statement with Frederick Grittner, Clerk of the Appellate Courts, 305 Judicial Center, 25 Constitution Avenue, St. Paul, Minnesota 55155, on or before November 29, 1994 and
2. All persons desiring to make an oral presentation at the hearing shall file 12 copies of the material to be so presented with the aforesaid Clerk together with 12 copies of a request to make an oral presentation. Such statements and requests shall be filed on or before November 29, 1994.

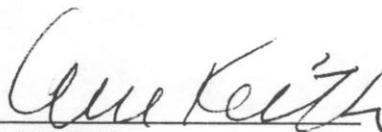
Dated: October 26, 1994

BY THE COURT:

OFFICE OF
APPELLATE COURTS

OCT 27 1994

FILED


A.M. Keith
Chief Justice

No. C8-84-1650 & C1-84-2140
STATE OF MINNESOTA
IN SUPREME COURT

APPELLATE DIVISION

NOV 29 1994

FILED

In re:

Amendment of the Rules of
Professional Conduct and
Rules on Lawyers Professional
Responsibility

REQUEST TO MAKE ORAL PRESENTATION

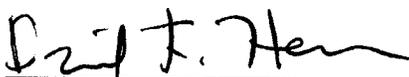
Petitioner, the Minnesota State Bar Association, respectfully requests an opportunity to make a brief presentation to the Court in support of its petition. It would propose to have the following individuals address the Court:

1. Michael J. Galvin, Jr. (Brief introduction)
2. David F. Herr (Supporting explanation or argument)

Dated: November 29, 1994.

MINNESOTA STATE BAR ASSOCIATION
By Michael J. Galvin, Jr., President

MASLON EDELMAN BORMAN & BRAND
A Professional Limited Liability Partnership

By 

David F. Herr (#44441)
3300 Norwest Center
90 South Seventh Street
Minneapolis, Minnesota 55402
(612) 672-8350

ATTORNEYS FOR PETITIONER
MINNESOTA STATE BAR ASSOCIATION

FILE NO. C8-84-1650 and C1-84-2140

OFFICE OF
APPELLATE COURTS

STATE OF MINNESOTA

DEC 1 1994

IN SUPREME COURT

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In Re Petition to Amend the Rules on
Lawyers Professional Responsibility
and the Rules of Professional Conduct

**COMMENTS OF THE
LAWYERS PROFESSIONAL
RESPONSIBILITY BOARD**

The Lawyers Professional Responsibility Board ("LPRB") submits its comments in support of the Minnesota State Bar Association ("MSBA") petition to amend the Minnesota Rules of Professional Conduct ("MRPC") and the Rules on Lawyers Professional Responsibility ("RLPR").

The Office of Lawyers Professional Responsibility and the LPRB have cooperated with the Dolan-Henson Committee to provide data and input regarding the existing disciplinary system and structures in Minnesota and the recommendations of the American Bar Association report of its Commission on Evaluation of Disciplinary Enforcement ("McKay report"). The LPRB reviewed the Dolan-Henson committee's draft report at its December 1993 meeting and provided comments. The LPRB has reviewed the final Dolan-Henson Report issued January 28, 1994.

At its September 9, 1994, meeting the LPRB considered and debated the MSBA's proposed amendments to the RLPR, which grew out of the Dolan-Henson recommendations, establishing a pilot project as to mediation of lawyer disciplinary complaints (proposed Rule 6X) and mandatory arbitration of fee disputes (proposed Rule 6Y). The LPRB voted to support the MSBA petition to amend the aforementioned rules and to provide written notice to the Court of its support. The LPRB is prepared to cooperate and support the administration of these pilot projects. The LPRB wishes to voice its support and thanks for the diligent work of both the

Dolan-Henson Committee and the MSBA in their endeavors to keep Minnesota at the forefront of lawyer discipline.

The proposed three year mediation pilot program will provide both an alternative method for resolving client complaints alleging minor attorney misconduct and an additional vehicle for resolving some complaints which are currently dismissed without investigation. This pilot program should enable the MSBA, the LPRB and this Court to determine whether mediation is effective in improving client-complainant satisfaction, correcting minor attorney misconduct and repairing minor breakdowns in attorney-client relationships. In addition, the pilot program should indicate whether the bar has the resources to sustain such a program statewide and whether more disciplinary resources are, in fact, made available for processing the most serious complaints. Similarly, the mandatory fee arbitration pilot will enable the Court to determine whether making fee arbitration mandatory raises client satisfaction while maintaining basic fairness for attorneys.

The LPRB also supports the amendments to the RLPR proposed by the Dolan-Henson Committee and included as an appendix to the Court's October 26, 1994, order in this matter. The LPRB notes for the Court's attention an amendment to Rule 4(c), RLPR, recommended in the Dolan-Henson report but not included in the appendix to the Court's October 26, 1994, order. The amendment provides: "Board meetings are open to the public, except the Board may go into closed session not open to the public to discuss matters protected by Rule 20 or for other good cause." At its September 17, 1993, meeting, the LPRB voted to open its meetings to the public. All meetings since that date have been open. The proposed amendment would make this LPRB policy a part of the Rules on Lawyers Professional Responsibility, and encourage public access.

The LPRB has also considered the MSBA proposed amendment to Rule 4.2, MRPC. At its September 9, 1994, meeting the LPRB voted to support the amendment of the MSBA.

In October 1992 the Director's Office issued an admonition to an attorney who was a party to a paternity action for violation of Rule 4.2, MRPC. The attorney acknowledged that he had contacted the adverse party to discuss settlement, that he was aware she was represented by counsel, and that he had not obtained the consent of her counsel prior to initiating the contact. The attorney was, himself, represented by counsel in the action. The attorney appealed the admonition and it was eventually presented to the Court for review. The Court vacated the admonition on the basis that the application of Rule 4.2 to the facts of the case is unclear. *In re Charges of Unprofessional Conduct against Panel File No. 92-33*, 508 N.W.2d 200 (Minn. 1993).

While the Director's Office and at least one panel of the LPRB have taken the position that Rule 4.2 prohibits attorney/adverse party contact regarding the subject of the representation in all cases where the adverse party has retained counsel and that counsel has not consented to the contact, the LPRB does acknowledge that Rule 4.2 can and should be clarified to deal with cases involving attorneys who are also parties to the proceedings.

Dated: November 29, 1994.

By Gregory M. Bistram
GREGORY M. BISTRAM, CHAIR
LAWYERS PROFESSIONAL
RESPONSIBILITY BOARD
Attorney No. 8503

and

By Marcia A. Johnson
MARCIA A. JOHNSON
DIRECTOR OF THE OFFICE OF LAWYERS
PROFESSIONAL RESPONSIBILITY
Attorney No. 182333
520 Lafayette Road, Suite 100
St. Paul, MN 55155-4196
(612) 296-3952

FILE NO. C8-84-1650 and C1-84-2140

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STATE OF MINNESOTA

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IN SUPREME COURT

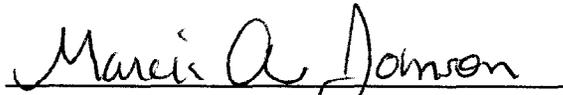
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In Re Petition to Amend the Rules on
Lawyers Professional Responsibility and the
Rules of Professional Conduct

**REQUEST TO MAKE
ORAL PRESENTATION**

The Lawyers Professional Responsibility Board requests leave for Marcia A. Johnson, Director of the Office of Lawyers Professional Responsibility, to address the Court concerning the Minnesota State Bar Association petition to amend the Rules on Lawyers Professional Responsibility, and the Minnesota Rules of Professional Conduct.

Dated: November 29, 1994. Respectfully submitted,



MARCIA A. JOHNSON
DIRECTOR OF THE OFFICE OF LAWYERS
PROFESSIONAL RESPONSIBILITY
Attorney No. 182333
520 Lafayette Road, Suite 100
St. Paul, MN 55155-4196
(612) 296-3952

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OFFICE OF
APPELLATE COURTS

November 29, 1994

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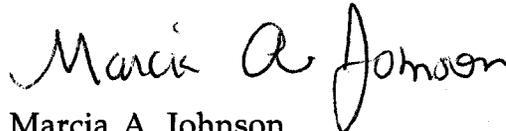
Office of Appellate Courts
25 Constitution Avenue
Room 305
St. Paul, MN 55155

Re: In Re Petition to Amend the Rules on Lawyers Professional
Responsibility and the Rules of Professional Conduct.
Supreme Court File No. C8-84-1650 and C1-84-2140.

Dear Clerk:

Enclosed for filing in the above matter are the original and 12 copies of the
Comments of the Lawyers Professional Responsibility Board. Also enclosed are an
original and 12 copies of a Request to Make Oral Presentation.

Very truly yours,



Marcia A. Johnson
Director

tt

Enclosures

cc: Hon. M. Jeanne Coyne
Michael J. Galvin
Timothy P. Groshens
Gregory M. Bistram
Nancy W. McLean